



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 20 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Burke, President
OSCO Industries, Inc.
11th and Chillicothe St.
Portsmouth, Ohio 45662

Dear Mr. Burke:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves OSCO Industries, Inc. CAA-05-2006-0009. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on **DEC 23 2005**.

Pursuant to paragraph 30 of the CAFO, OSCO Industries, Inc. must pay the civil penalty within 30 days of **DEC 23 2005**. Your check must display the case docket number, CAA-05-2006-0009, and the billing document number, 050306008.

Please direct any questions regarding this case to Eaton Weiler, Associate Regional Counsel, (312)886-6041.

Sincerely yours,


William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

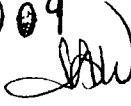
IN THE MATTER OF:

OSCO Industries, Inc
Portsmouth, Ohio

OSCO Industries, Inc.
Jackson, Ohio

Respondent.

Docket No.

CAA-05-4006 0009 

**Proceeding to Assess a Civil
Penalty under Section 113(d) of the
Clean Air Act,
42 U.S.C. § 7413(d)**

REGION 5
SECTION 113(d)
CLEAN AIR ACT

DEC 23 AM 1:22

REGION 5

Consent Agreement and Final Order

I. Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).
3. Respondent is OSCO Industries, Inc., (OSCO) a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

II. Jurisdiction and Waiver of Right to Hearing

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.
7. OSCO admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Without admitting any of the factual allegations, and without admission of liability, OSCO waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

III. Statutory and Regulatory Background

9. On October 31, 1980, U.S. EPA approved Ohio Admin. Code § 3745-21-08 as part of the federally enforceable state implementation plan (SIP) for Ohio. 45 Fed. Reg. 72140.
10. Ohio Admin. Code § 3745-21-08 as incorporated into the Ohio SIP applies to all new stationary sources regardless of location.
11. Ohio Admin. Code § 3745-21-08 as incorporated into the Ohio SIP requires that “no person shall emit the carbon monoxide gases generated during the operation of a grey iron cupola . . . unless they are burned at 1,300 degrees Fahrenheit for 0.3 seconds or greater in a direct-flame afterburner or equivalent device.”
12. On October 1, 1982, U.S. EPA approved Ohio Admin. Code § 3745-15-01 as part of the federally enforceable state implementation plan (SIP) for Ohio. 47 Fed. Reg. 43377.
13. Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP, defines “person”, in part, as “any . . . public or private corporation, individual, partnership, or other entity.”
14. Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP, defines “new source” as any source the construction or modification commenced on or after February 15, 1972.
15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).
16. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

18. On December 1, 2003, and April 26, 2005, U.S. EPA issued Notices of Violation to OSCO for violations of the CAA, and provided copies of the Notices of Violation to the State of Ohio pursuant to 42 U.S.C. § 7413(a)(1).
19. The 30-day period established in 42 U.S.C. § 7413, between the issuance of the Notices of Violation and issuance of this Administrative Consent Order has elapsed.

IV. Factual Allegations

A. Portsmouth Facility

20. OSCO is a person within the meaning of Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP.
21. OSCO owns and operates a grey iron foundry, including two grey iron cupolas, at U.S. Route 23 and U.S. Route 52, Portsmouth, Ohio (Portsmouth Facility).
22. At all times relevant to this administrative action, OSCO's Portsmouth Facility constitutes a "new source" within the meaning of Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP.
23. To control emissions of carbon monoxide gases from the cupolas at the Portsmouth Facility, OSCO operates a direct-flame afterburner or equivalent device.
24. For a period of time on 178 days at the Portsmouth Facility, carbon monoxide gases generated during the operation of the grey iron cupola were emitted without being burned at 1,300 degrees Fahrenheit or greater in a direct-flame afterburner or equivalent device. On 126 of those days, the temperature of the afterburner or equivalent device may have stayed below 1,300 degrees Fahrenheit for less than 15 minutes.

B. Jackson Facility

25. OSCO is a person within the meaning of Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP.
26. OSCO owns and operates a grey iron foundry, including a grey iron cupola at Athens and Chillicothe St. Jackson, Ohio (Jackson Facility).
27. At all times relevant to this administrative action, OSCO's Jackson Facility constitutes a "new source" within the meaning of Ohio Admin. Code § 3745-15-01, as incorporated into the Ohio SIP.
26. To control emissions of carbon monoxide gases from the cupola at the Jackson Facility, OSCO operates a direct-flame afterburner or equivalent device.
27. For a period of time on 468 days at the Jackson Facility, carbon monoxide gases generated during the operation of the grey iron cupola were emitted without being

burned at 1,300 degrees Fahrenheit or greater in a direct-flame afterburner or equivalent device. On 188 of those days, the temperature of the afterburner or equivalent device may have stayed below 1,300 degrees Fahrenheit for less than 15 minutes.

V. Violations

A. Portsmouth Facility

1. In violation of Ohio Admin. Code § 3745-21-08, as incorporated into the Ohio SIP, on 178 days at the Portsmouth Facility, carbon monoxide gases generated during the operation of the grey iron cupola were emitted without being burned at 1,300 degrees Fahrenheit or greater in the direct-flame afterburner or equivalent device.

B. Jackson Facility

2. In violation of Ohio Admin. Code § 3745-21-08, as incorporated into the Ohio SIP, on 468 days at the Jackson Facility, carbon monoxide gases generated during the operation of the grey iron cupola were emitted without being burned at 1,300 degrees Fahrenheit or greater in the direct-flame afterburner or equivalent device.

VI. Civil Penalty

29. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e) and the facts of this case, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$75,000.
30. OSCO must pay the \$75,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 90 days after the effective date of this CAFO.

31. OSCO must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Eaton R. Weiler, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

34. This civil penalty is not deductible for federal tax purposes.
35. If OSCO does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
36. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. OSCO will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. OSCO will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. Final Statement

37. This CAFO resolves Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.
38. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
39. This CAFO does not affect OSCO's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 37 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
40. OSCO certifies that it is complying fully with Ohio Admin. Code § 3745-21-08, as incorporated into the Ohio SIP.
41. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine OSCO's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

42. The terms of this CAFO bind OSCO, and its successors, and assigns.
43. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
44. Each party agrees to bear its own costs and attorneys' fees in this action.
45. This CAFO constitutes the entire agreement between the parties.

CONSENT AGREEMENT AND FINAL ORDER

OSCO Industries, Inc.
Portsmouth, Ohio

OSCO Industries, Inc.
Jackson, Ohio

For Complainant, U.S. EPA Region 5,

12/19/05
Date

Mary P. Tyson
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

For Respondent, OSCO Industries, Inc.,


11/30/05
Date

John P. Burke
JOHN Jeffrey A. Burke, President
OSCO Industries, Inc.

OAA-05-2006 0009
John

CONSENT AGREEMENT AND FINAL ORDER

OSCO Industries, Inc.
Portsmouth, Ohio

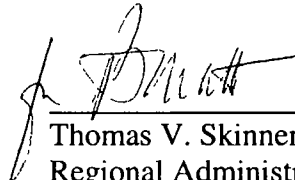
CAA-05-2006 0009 

OSCO Industries, Inc.
Jackson, Ohio


Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

12-20-05
Date



Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency, Region 5

CAA-05-2006 0009 

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2006 0009 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to John Burke, William D. Hayes, Robert Hodanbosi, Philip H. Thompson, and Dean Ponchak by placing them in the custody of the United States Postal Service addressed as follows:

John Burke, President
Osco Industries
P.O. Box 1388
Portsmouth, Ohio 45662

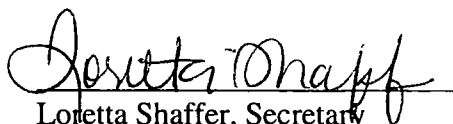
William D. Hayes
Vorys, Sater, Seymour and Pease LLP
221 E. Fourth Street, Suite 2000
Cincinnati, Ohio 45202-4194

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. 1049
Columbus, Ohio 43216-1049


Philip H. Thompson
Director, Air Pollution Unit
Portsmouth City Health Department
605 Washington Street, Third Floor.
Portsmouth, Ohio 45662

Dean Ponchak, APC Supervisor
Ohio EPA Southeast District Office
2195 Front St.
Logan, Ohio 43138

on the 23rd day of December, 2005.


Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 9025 6305

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